

## **PROPOSED REGULATION 26**

### **GOVERNING INFORMED CONSENT FOR AN ABORTION**

Act 353 of 2001 Regular Session of the 83<sup>rd</sup> General Assembly required the Arkansas State Medical Board to pass such regulation that may be necessary to ensure that physicians who perform abortions obtain the correct informed consent from their patients. Arkansas Code Annotated § 17-95-409(a)(2)(p) provides that a physician may have his license revoked or suspended or other sanctions imposed if he is found by the Board to have violated a regulation of the Board.

A physician shall not perform an abortion in the State of Arkansas, except with the voluntary and informed consent of the patient. Except in the case of a medical emergency, consent to an abortion is considered voluntary and informed if, and only if:

1. Prior to and in no event on the same day as the abortion procedure, the patient is told the following, by telephone or in person, by the physician who is to perform the abortion, or by a referring physician or by an agent of either physician:
  1. The name of the physician who will perform the abortion procedure;
  2. The medical risks associated with the particular abortion procedure to be employed;
  3. The probable gestational period of the fetus at the time the abortion is to be performed; and
  4. The medical risks associated with carrying the fetus to term.

The information above may be provided by telephone without the physician or referring physician performing a physical examination or tests of the patient. If the information above is supplied by telephone, the information may be based on both facts supplied to the physician by the patient and any other relevant information that is reasonably available to the physician. The information described herein may not be provided by a tape recording, but shall be provided during a consultation in which the physician or his agent is able to ask questions of the patient and the patient is able to ask questions of the physician or his agent. If a physical examination, test, or other new information subsequently indicates, in the medical judgment of the physician, the need for a revision of the information previously supplied to the patient, the revised information may be communicated to the patient at any time prior to the performance of the procedure. Nothing in this regulation is to be construed to preclude providing the information through a translator in a language understood by the patient.

2. Prior to and in no event on the same day of the abortion, the patient is to be informed, by telephone or in person, by the physician who is to perform the abortion procedure, or by a referring physician or by an agent for either physician the following:
  - a. That medical assistance benefits may be available for the prenatal care, childbirth, and neo-natal care.
  - b. That the father is liable to assist in the support of the child, even in instances in which the father has offered to pay for the abortion procedure.
  - c. That the patient has the option to review the printed or electronic materials described in this Section 2 and that those materials have been provided by the State of Arkansas and that they describe the fetus and list agencies that offer alternatives to the abortion procedure.

That if the patient chooses to exercise her option to view the material in a printed form, the materials shall be mailed to her by a method chosen by the patient, or may view the material via the internet if the patient informs the physician of the specific address of the internet website where the information may be provided. The information required in this Section 2 may be provided by a tape recording if provision is made to record, or otherwise register specifically whether the patient does or does not choose to review the printed materials.

The information required to be distributed by the physician to the patient in Section 2 above may be obtained from the Arkansas Department of Health. No penalty may be imposed by the Arkansas State Medical Board against the physician until the Arkansas Department of Health has the printed materials available to the physician so that they may be distributed or made available to the patient.

3. Prior to the abortion procedure, and thus the termination of the pregnancy, the patient must certify in writing that the information and options described in Section 1 and 2 above have been furnished to the patient, as well as the fact that the patient has been informed of her option to review the information. The physician, prior to the abortion procedure, must obtain this written certification and maintain that document in the records of the patient.
4. Prior to the abortion procedure being performed, the physician who is to perform the procedure, shall confirm with the patient, that the patient has received the following information:
  - a. The medical risks associated with the particular procedure to be employed.
  - b. The probable gestational age of the unborn child at the time the abortion is to be performed.
  - c. The medical risks associated with carrying the fetus to term.

If in fact, the abortion procedure is performed by a physician on a patient due to a medical emergency, the informed consent requirements stated above are not required. Medical emergency as defined by Arkansas Law means any condition which, on the basis of the physician's good faith clinic judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death or for which a delay will create serious risks of substantial and deemed to be irreversible impairment of a major bodily function. In such a case, the physician is to inform the patient that an abortion is necessary to avert her death or that the delay will create a serious risk of substantial and deemed to be irreversible impairment of a major bodily function.